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MEMORANDUM

From: Christopher Taylor, Assistant State Attorney *CT*

To: Bruce H. Colton, State Attorney

Date: June 18, 2015

RE: May 30, 2015 Shooting Death of Jason Murtha, Sebastian Police Department Case #15-1563

Facts

Eric Wetzel is the owner/driver of Caravan transportation, a taxi service that operates in the Sebastian, Florida area. Wetzel's taxi is a 2001 Dodge Caravan with sliding side passenger doors. On May 30, 2015, Wetzel drove his taxi to 1587 Quatrain Lane to pick up Jason Murtha and Michael Hains. Murtha and Hains had called at 12:17am for the pick-up, with their destination being Earls's Hideaway. On previous occasions Wetzel had given taxi rides to these two individuals without incident. Murtha and Hains were not present when Wetzel arrived for the pick-up. Wetzel called his company's dispatch at 12:36am to report that Murtha and Hains were not at the pick-up location. Wetzel then drove Southeast on Quatrain Lane to Concha Drive. Wetzel then went East on Concha Drive towards the intersection of Concha Drive and Periwinkle Drive. As he approached this intersection, Wetzel observed Murtha and Hains approaching his taxi. After Wetzel stopped the taxi, Hains got in and sat in the rear passenger side seat while Murtha sat in the rear driver's side seat. Murtha then leaned forward and held a knife to Wetzel's throat demanding that he give Murtha all his money¹. Murtha then exited the taxi and held the knife to Wetzel's throat through the open driver's window and yelled "Give me all your money!" Wetzel observed the knife to be a long, serrated, kitchen type knife. He then reached in his left front shirt pocket, withdrew his money and handed it to Murtha. At some point during the incident, the top of Wetzel's hand was cut by the knife. Wetzel handed the money to Murtha because he was in fear for his life. After Murtha withdrew the knife from his throat, Wetzel then began to drive slowly into the

¹ Hains later told Law Enforcement that he did not know that Murtha was going to rob the taxi driver. Hains stated that he exited the van when he heard Murtha demand money. After he exited the van, he heard several "pops" and saw Murtha running. He stated that he never saw a knife. It should be noted that Law Enforcement observed Hains to be extremely intoxicated at the time of his interview.

intersection. As the taxi moved forward, Murtha followed the vehicle on foot. As Murtha followed the taxi, he kicked the back tire, waived the knife at Wetzel and continued to curse and yell taunts. As Wetzel turned left onto Periwinkle he looked in his rearview mirror and saw Murtha running towards him with the knife in his hand. Fearing he would be killed while sitting in the van, Wetzel stopped and exited the vehicle. As Wetzel was pulling his gun from his belt holster,² Murtha was still approaching him with the knife in his hand. Fearing for his life, Wetzel began firing his pistol at Murtha³. During the first two shots, Murtha was still advancing towards Wetzel with knife and was less than a car length away.⁴ After the first two shots, Murtha then turned and ran around the back of the taxi heading East on Concha. Wetzel continued shooting after Murtha turned and ran. Wetzel moved away from the taxi and walked in an arc pattern as he shot so that he would not lose sight of Murtha. Wetzel states that the actual shooting occurred in a very short period of time. During the entire time he was firing his handgun, Wetzel states that he was in fear for his life. Wetzel then called 911 to report the incident. The time of the 911 call was 12:40am. At 12:47am, Law Enforcement found Murtha lying on the concrete in front of the door to his residence at 1573 Cownie Lane. Found next to his head was a black handled serrated steak knife. After observing Murtha attempting to grab the knife, Law Enforcement removed it from its location. He was later pronounced deceased at the Sebastian River Medical Center. Later, an autopsy was performed and revealed five bullet wounds; two being characterized as causing death/fatal. One bullet entered the upper right back exiting the right chest causing internal bleeding. This wound was fatal. One bullet entered the left side of his back exiting the left front hitting no organs. This wound was non-fatal. Three bullet wounds were located to the back of the right leg exiting the front. One of these wounds involved the severing of an artery. This wound was fatal.

Witness Cole Thompson was at the intersection of Concha Drive and Periwinkle Drive at the time of the incident. Thompson was driving Southwest on Concha Drive toward the intersection when he saw Wetzel's van already stopped at the intersection. Thompson waited for a few seconds and then saw the van move forward slowly and then start turning as if to go left on Periwinkle Drive. He then saw a tall male following the van on foot saying something to the driver while kicking the back tire. (Thompson did not hear what was being said). Thompson then drove forward passing the van and the male to his left. Thompson then began looking back at the van and the male via his rear view mirror. He saw the van come to a stop and the male approaching the driver's side door of the van. Thompson then saw the driver of the van exit, pull a handgun from his waist area and point it in the air. At this point, the Male was less than the length of the van in distance from the driver and was still moving in the direction of the driver. Thompson then observed the driver start shooting the gun, the first shot being in the air and the rest of the shots being in the direction of the approaching male. After the first shot, Thompson observed the male to turn and run down the length of the van and then left behind the van. Thompson observed the driver to continue to fire the handgun as he followed the fleeing male. Thompson

² Wetzel possesses a permit to carry a concealed firearm. A check of Wetzel's criminal history reveals no criminal convictions.

³ Wetzel was carrying a Ruger LC 9 mm semi-automatic handgun that holds seven rounds in the magazine. Wetzel stated that at the time of the incident, the firearm was loaded with seven rounds and that he fired all seven rounds. Six bullet casings were recovered at the scene.

⁴ Witness Cole Thompson recounted a similar observation to the police but stated that the first shot was in the air and characterized it as a "warning shot."

observed the driver to stop following the male as he reached the back of the van. As Thompson continued driving away from the scene, he observed the male run Northeast on Concha Drive.

Law

F.S. 776.012(2) states that: "A person is justified in using or threatening to use deadly force if he or she reasonably believes that using or threatening to use such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony. A person who uses or threatens to use deadly force in accordance with this subsection does not have a duty to retreat and has the right to stand his or her ground if the person using or threatening to use the deadly force is not engaged in a criminal activity and is in a place where he or she has a right to be."

F.S. 776.013(1) states that: "A person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another when using or threatening to use defensive force that is intended or likely to cause death or great bodily harm to another if the person against whom the defensive force was used or threatened was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a dwelling, residence, or occupied vehicle...and the person who uses or threatens to use defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred."

The applicable law and facts of the case indicate that Wetzel was *presumed* to have held a reasonable fear of imminent peril of death or great bodily harm to himself and was justified in using force likely to cause death or great bodily harm to another. Murtha entered an occupied vehicle with the intent to commit a robbery and in the process placed Wetzel in fear for his life. According to the law, Wetzel had no duty to retreat because he was not engaged in criminal activity and was in a place he had a right to be.

It should also be noted that in a criminal prosecution the burden of proving guilt beyond a reasonable doubt never shifts from the state and, as a result, when self-defense is properly at issue, the state effectively has the burden to prove that defendant was not acting in self-defense during the commission of the criminal act.⁵ The burden on the state is "proof beyond a reasonable doubt."

In analyzing the facts of this case, it is significant that the incident transpired very quickly. From the time Wetzel called his company's dispatch to tell them that Murtha and Hains were not at the pick-up spot on Quatrian Lane, until the time he called 911 to report that the shooting had occurred; only four minutes had elapsed. The facts indicate that Wetzel fired all seven rounds in a rapid manner with the first two shots being fired as Murtha was advancing on Wetzel. The remainder of the shots were fired by Wetzel as he moved so that he would not lose sight of Murtha as he ran around the back of the taxi and East on Concha.

⁵ See Sipple v. State, 972 So.2d 912, 915-16 (Fla. 5th DCA 2007)

It is the opinion of this office that at trial, based upon the facts of this case, the state would not be able to disprove an assertion of self-defense beyond and to the exclusion of every reasonable doubt.